

CO: the hidden dangers

Carbon monoxide leakage poses serious, even lethal, risks yet there are many obstacles to bringing a legal claim, **Stephanie Trotter** warns

IN BRIEF

- ▶ Outlines the obstacles to bringing a claim: proving CO poisoning can be difficult.
- ▶ CO kills yet basic Health and Safety Commission recommendations have not been implemented.
- ▶ About three million people, or even more in the UK could be being exposed to carbon monoxide now.

In poisoning cases, evidence of poisoning, causation and expert medical evidence are usually extremely difficult. The gas cannot be smelled, tasted, seen or touched but less than 2% of CO in the air can kill in one to three minutes. Exposure, often from faulty heating and cooking appliances, can also cause brain damage or make people very ill.

Firemen when talking about CO in smoke (which you can smell) say it takes only three breaths, the first you don't know there's a problem, the second you might suspect there's something wrong but by the third you are incapable of action. Landlords are usually worth suing. However, although most Registered Gas Engineers have public liability insurance, this is not a mandatory requirement of registration; legislation is needed to require this.

What's more, there is a lack of awareness among GPs about the symptoms of CO poisoning—for example, one doctor tested this by asking 200 GPs to diagnose the symptoms of CO poisoning with the result that not one of them correctly identified the cause. For lawyers, the task of bringing a claim is further complicated by difficulties in testing for the poison. Evidence of CO usually leaves the client's blood quickly even though the damage it has caused remains. It makes more sense to test the appliances and the air the person has been exposed to, but GPs do not tend to provide CO alarms and air sampling monitors.

Numbers affected

Lack of proof means numbers affected are underestimated; yet if University College London research is extrapolated over the population, 3-5 million people are being exposed to levels of CO far above World Health Organisation guidelines in the UK alone (see <https://bit.ly/364C2d2>). The early findings of the research included that 23% of homes had one or more defective gas appliance; and 8% of homes were judged

to be at risk of dangerous levels of CO. See also the more recent research by John Moore's University, Liverpool: 'Investigation of audible carbon monoxide alarm ownership: case study,' <https://bit.ly/2NH8XOg>.

Difficult to prove

The Health and Safety Commission (HSE) concentrates on breach of statutory duties rather than negligence. HSE normally only investigates after a known CO death, yet dead bodies are not automatically tested for CO. A further problem is that the report written up by the HSE's expert is privileged so the family won't receive it until all questions and decisions about prosecution have been made.

Inspectors from the Gas Safe Register will inspect a gas appliance if work has been done by a Registered Gas Engineer in the last six months. However, if the claimant is a tenant, the inspector will not test the gas appliance for CO unless the landlord gives permission. Even if a tenant has the courage to ask, this means the evidence almost invariably disappears. This has been raised with the HSE, which licenses the Gas Safe Register.

In an owner occupier case, the survivor, complaining to the Gas Safe Register about the engineer who serviced the appliance suspected of emitting the CO, will find the engineer will probably offer to come and fix the appliance so the survivor can have heating and hot water. Evidence tends to disappear. Those exposed to high levels of CO could fail to even know they've been poisoned.

An independent gas expert court witness should be instructed by a solicitor but without proof of CO, obtaining the services of a solicitor and an expert is nearly impossible. The cost of such an expert is usually thousands of pounds.

It becomes Catch 22: to prove CO, you have to prove CO.

The CMDDA1 qualification allows registered gas safe engineers to test an appliance for CO if, for example, a CO alarm has sounded. This could be a useful and affordable first step before obtaining a solicitor and investigation by an independent expert court witness. However, it can be difficult to find a CMDDA1 qualified engineer willing to come and test, the cost is between about £200 and £500 and, if you are a



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tenant, most engineers think they have to have the landlord's permission.

A further problem is that the other side might argue that the engineer qualified under CMDDA1 could have changed something on the appliance.

Costs of action

There is no specific support for CO victims other than that offered by CO-Gas Safety, which receives no guaranteed funding and is almost entirely run by volunteers. It is rare for legal aid to be granted in a poisoning case. Court fees are £10,000 for a claim of £200,000 and basically 5% below £200,000. No win no fee insurance may work but the claimant faces the obstacle of paying for the expert. As Debra Morris of Affinity Law says: 'The after the event insurers would need to authorise this cost, and without supportive factual and medical evidence providing causation, they are unlikely to agree to the cost of an expensive expert report—again a catch 22 situation.'

The law does not provide damages for death itself. There are also claims for loss of dependency, for example, the loss of financial support or support by providing services. There are also sums that the deceased's estate can claim for pain and suffering and loss of amenity. However, in cases of instant death, these will be minimal or non-existent.

There are also bereavement damages which are basically a mere £12,980 and funeral expenses. However, even these miserly sums couldn't be claimed by parents for the death of two sons who lived and died together from CO in a landlord's property, because both sons had attained 18 and never married. **NLJ**

Stephanie Trotter, OBE is a barrister and President & Director of CO-Gas Safety, which will mark its 25th anniversary on 25 January 2020. View this one-minute film about Sue who had carbon monoxide poisoning, at: www.co-gassafety.co.uk/one-survivors-story.